

FILED

OCT 27 1953

HAROLD B. WILLEY, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, 1953

Nos. 198-9, 200-1

MICHIGAN-WISCONSIN PIPE LINE CO.,
ET AL.,

Appellants,

v.

ROBERT S. CALVERT, ET AL.,
Appellees.

MOTION TO ADVANCE

JOHN BEN SHEPPERD
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TO THE HONORABLE SUPREME COURT OF THE UNITED
STATES:

Now come the Appellees in the above numbered and entitled cause and respectfully move this Honorable Court to advance the hearing and oral argument in the above cases, and for grounds therefor will show the following:

Statement of the Nature of the Cases

The Appellees are Robert S. Calvert, Comptroller of Public Accounts, John Ben Shepperd, Attorney General, and Jesse James, State Treasurer, all of whom are Texas officials. The Appellants are both engaged in the transmission of gas produced in

Texas. Part of the gas involved is transmitted in intrastate commerce and part in interstate commerce. Both Appellants either take and/or retain such gas at the outlet of gasoline plants within the meaning of Section XXIII of House Bill 285, Acts of the Fifty-second Legislature of Texas (1951) which is a revenue measure. Subsection 2 of the Act is as follows: (omitting certain exemptions)

“In addition to all other licenses and taxes levied and assessed in the State of Texas, there is hereby levied upon every person engaged in gathering gas produced in this State, an occupation tax for the privilege of engaging in such business, at the rate of 9/20 of one cent per thousand (1,000) cubic feet of gas gathered.”

The second sentence of Subdivision (c) of Subsection 1 of such Section XXIII is as follows:

“In the case of gas containing gasoline or liquid hydrocarbons that are removed or extracted at a plant within the State by scrubbing, absorption, compression or any other process, the term ‘gathering gas’ means the first taking or the first retaining of possession of such gas for other processing or transmission, whether through a pipeline, either common carrier or private, or otherwise, after such gas has passed through the outlet of such plant.”

The single question presented for decision is whether the revenue measure, as applied to the business activities of Appellants violates the Commerce Clause of the Constitution of the United States.

Reasons Supporting Motion

There exists within the State of Texas an urgent need for the early disposition of this litigation in order to evaluate properly the financial structure of the State. An immediate need exists for money to finance a program of drouth relief, an increase in teachers' salaries, public employees' salaries, and the financing of the Texas eleemosynary institutions. In view of the recent reduction in the Texas oil allowances, the revenue of Texas has been greatly curtailed and an early decision in these cases would be extremely advantageous in determining the financial needs to be supplied by a Called Session of the Texas Legislature.

Moreover, there are approximately one hundred twenty-five (125) similar separate suits pending in the Texas Trial Courts awaiting the outcome of these two cases. Under our protest statute it is necessary to amend the petitions every ninety (90) days to include additional payments made under protest. The amended petitions consist of twenty (20) to forty (40) typewritten pages, exclusive of exhibits, which create an extreme hardship upon these other litigants.

Prayer

WHEREFORE, Appellees respectfully pray this Honorable Court to advance these causes for hearing

and oral argument to an earlier session, if such advancement will meet the convenience of this Court.

Respectfully submitted,

JOHN BEN SHEPPERD
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Assistant Attorney General
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Copies of this Motion have been furnished to adverse counsel.